

BEFORE THE  
FAIR POLITICAL PRACTICES COMMISSION  
STATE OF CALIFORNIA

In the Matter of:

HARRY J. PAPPAS,

Respondent

FPPC No. 02/723

OAH No. N2003120542

**PROPOSED DECISION**

On September 10, 2004, Administrative Law Judge M. Amanda Behe, State of California Office of Administrative Hearings, heard this matter in Sacramento, California.

Complainant was represented by William L. Williams, Jr., Commission Counsel.

Respondent was represented by Ben Davidian, Sweeney, Davidian & Greene, LLP.

The record remained open for the parties to file closing briefs. On September 20, 2004, Complainant's Closing Brief was received as Exhibit 9. On September 27, 2004, Respondent's Closing Brief was received as Exhibit B. On October 1, 2004, Complainant's Reply Brief was received as Exhibit 10.

**FACTUAL FINDINGS**

1. Complainant Mark Krausse is the Executive Director of the Fair Political Practices Commission of the State of California (the Commission), and filed Accusation No. 02/723 in his official capacity.

2. At all times relevant to Accusation No. 02/723 Harry J. Pappas (respondent) was the owner of Pappas Telecasting Company. At all times relevant to Accusation No. 02/723 respondent was domiciled in Tulare County, California, until his permanent move to Reno, Nevada, on June 27, 2004.

Respondent testified that he has been a licensed broadcaster for approximately forty years, and managed, developed and operated television and radio stations. Pappas Telecasting Company includes KMPH Television and News Radio, KFRE Television, etc., and broadcasts in Fresno, Tulare, and Kings Counties and other areas. Broadcasting is a highly regulated field, and respondent has hired specialized attorneys throughout the country

to handle complex Federal Communications Commission matters including reporting requirements.

3. Jurisdiction in this matter is properly before the Commission, and all statutory procedural requisites to conduct the hearing were met.

4. The Political Reform Act, Government Code sections 81000 through 91014, provides that the Commission shall administer, implement and enforce its provisions. The Commission's regulations are contained in the California Code of Regulations, title 2, sections 18109 through 18997.

5. Government Code section 82013, subdivision (c), includes within the definition of "committee" any person or combination of persons who directly or indirectly makes contributions totaling \$10,000 or more in a calendar year to or at the behest of candidates or committees.

6. On or about February 19, 2002, respondent qualified as a "committee" pursuant to Government Code section 82013, subdivision (c), as his campaign contributions to candidates or committees for the 2002 calendar year totaled \$10,000 or more. Specifically, respondent's contributions totaled \$27,000. The type of committee that respondent became by virtue of his contribution activity is commonly referred to as a "major donor committee."

7. Pursuant to Government Code section 82027.5, subdivision (a), any committee formed under section 82013, subdivision (c), is also a "general purpose committee." Pursuant to Government Code section 82027.5, subdivision (b), a committee that supports candidates or measures in a state election or in more than one county is a "state general purpose committee." Therefore, respondent, as a major donor committee, also became a state general purpose committee because he supported a candidate for statewide office.

8. Government Code section 84203 requires every candidate and committee that makes a late contribution, as defined in section 82036, to file a late contribution report within 24 hours of making the contribution.

9. Government Code section 82036 defines a late contribution as any contribution that totals \$1,000 or more, and is made to a candidate, a controlled committee, or a primarily formed committee, during the period before an election but after the closing date of the last campaign statement required to be filed before the election.

10. Pursuant to Government Code section 84200.8, subdivision (b), the late contribution period covers the last 16 days before an election, for an election not held in June or November of an even-numbered year.

11. Government Code section 84200, subdivision (b), requires every major donor committee to file a semi-annual campaign statement for any semi-annual reporting period in

which the committee made campaign contributions. The first semi-annual campaign statement covers the reporting period January 1 to June 30, and must be filed by July 31. The second semi-annual campaign statement covers the reporting period July 1 to December 31, and must be filed by January 31 of the following year.

12. Government Code section 84605, subdivision (a), requires every major donor committee that makes contributions totaling \$50,000 or more in a calendar year to file all required campaign statements online or electronically with the Secretary of State, in addition to filing paper statements as required by section 84200, subdivision (b).

13. Government Code section 84215 requires any major donor committee to file its campaign statements with the clerk of the county in which the committee is domiciled. Additionally, section 84215, subdivision (a), requires any major donor committee that supports statewide candidates or elected officers to file its campaign statements with the Secretary of State, with the Registrar-Recorder of Los Angeles County, and with the Registrar of Voters of the City and County of San Francisco.

14. The parties stipulated that respondent has not been the subject of previous enforcement actions under the Act. The parties stipulated that respondent cooperated with the investigative staff of the Commission in the course of its investigation.

15. The parties stipulated that at the time of the conduct alleged in Accusation No. 02/723 the public could contact the Commission's Technical Assistance Hotline or go to the Commission's website for information regarding campaign filing obligations identified in Counts One through Six of the Accusation.

16. Chief Investigator Susan Straine described the Commission's efforts to provide information to the public regarding filing obligations under the Act. Information available on the Commission's website includes filing instructions and "Questions and Answers" regarding requirements for late contribution reports, electronic filing of campaign statements, etc. The Commission also conducts courses targeted at campaign treasurers, but offers no comparable outreach programs for late contributors or major donors.

Investigator Straine described the significance of late contribution reports as the only way for the public and press to know about contributions made shortly before voting. Electronic filing is equally important as the only source of such information for the public and press other than personally visiting offices in Sacramento, Los Angeles or San Francisco.

In Investigator Straine's experience many individuals fail to file late contribution reports, and a number of major donors have failed to file required major donor statements. In both situations individuals who failed to comply with the Act commonly claim<sup>1</sup> to have not known of their reporting obligations.

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<sup>1</sup> Respondent's Closing Brief, Exhibit B, p. 3, lines 1-2, which purports to summarize Investigator Straine's testimony, states that the individuals who claimed to be unaware of their reporting obligations were truthful. Her testi-

17. Respondent has worked for political campaigns as a volunteer in the past, and began making campaign contributions when he became eligible to vote in the 1960's. Before the subject investigation he had no particular knowledge of the Act, and knew of its provisions in only the most general terms. Respondent described that even today, despite his serious interest in abiding by the law, with all the demands of his businesses he does not remember the reporting deadlines and dollar amounts with specificity.

Before the subject investigation respondent was unaware of the Commission's website and "800" number. In 2002 he knew of the existence of the Commission but did not contact it regarding his obligations under the Act.

18. The Secretary of State's website maintains a "Filing History"<sup>2</sup> for respondent which indicates that a late contribution report was filed in 1998. That report was not presented at hearing. Investigator Straine acknowledged that the Commission does not know who filed the 1998 report or that such a report ever existed. Respondent has no knowledge of a late contribution report filed on his behalf in 1998.

Investigator Straine opined that an individual who filed a late contribution report in 1998 would know of the obligation to file such reports, but does not know that respondent is such an individual. She also acknowledged that the Commission is unaware of whether respondent received the notice required in 2002 pursuant to California Code of Regulations, title 2, section 18427.1, subdivision (b). At that time a candidate or committee which received \$5,000 or more in contributions in a year was required to provide notice to contributors of their obligation to file campaign reports.

19. The parties stipulated that during 2002 respondent made 16 contributions to 9 state and local candidates for a total of \$167,000. The parties stipulated that respondent was one of 10 persons in the state who contributed \$100,000 or more to Bill Jones' candidacy for governor in 2002.

20. In February 2002 respondent made contributions in four local primaries and one statewide primary. No one associated with any of those campaigns advised him of the requirement to file a late contribution report. Respondent acknowledged that the campaigns had no obligation to provide such information to him. Respondent did not personally learn of the requirement to file late contribution reports until after July 31, 2002.

Prior to the subject investigation respondent's reports to the Commission were completed by Pappas Telecasting Company staff, which includes a bookkeeper and two

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mony recounted their assertions that they were ignorant of reporting obligations. Investigator Straine did not testify those excuses were truthful.

<sup>2</sup> Respondent's Closing Brief, Exhibit B, p. 3, line 3, referred to the source of the Filing History as the Secretary of State's "website," and Investigator Straine used the same term. The Filing History, Exhibit 6, contains the phrases "Cal-Access Restricted View," "Restricted Resource," and "Change Password," all of which suggest that the information is not found on a publicly accessible website.

attorneys. The attorneys handle employment issues, real estate matters, etc., and neither has experience with the Act. One of those individuals was studying for the Bar exam during the summer of 2002. Respondent's standard of business is to follow the law and behave honorably, and he credibly testified that to the extent he knew the legal requirements of the Act he tried to comply.

In 2002 respondent's first semi-annual report was filed in writing and electronically on or before the July 31, 2002, deadline. He recalled that his staff was proud that his second semi-annual report was ready before the January 31, 2003, due date. The report was filed in writing on January 16, 2003. That report was not also filed electronically, an omission that respondent could not explain except as an oversight or error.

21. Respondent testified that he would not put his good name in jeopardy by violating the law, and he was not attempting to conceal the contributions which are the subject of the Accusation. As a licensed broadcaster his policy is to inform the public, and his stations regularly run announcements regarding the availability of public files.

Since the Commission's investigation respondent has hired the law firm of Sweeney, Davidian & Greene, LLP, and Davis Bauer, a political reporting service, to assure that he is in compliance with the Act. Respondent testified that he has learned this is an extremely complex area of law and specialized advice is necessary.

## COUNT ONE

22. With regard to Count One, which alleged that in violation of Government Code section 84203 respondent failed to file a late contribution report disclosing his \$3,000 late contribution to the Committee to Elect Jeff Hamilton, the parties stipulated that:

On or about February 19, 2002, respondent made a contribution of \$3,000 to the Committee to Elect Jeff Hamilton.

The Committee to Elect Jeff Hamilton was a committee controlled by Jeff Hamilton, a candidate for Fresno County District Attorney in the March 5, 2002, primary election.

The late contribution reporting period for the March 5, 2002, primary election was February 17 through March 4, 2002, and the \$3,000 contribution that respondent made on or about February 19, 2002, to the Committee to Elect Jeff Hamilton was made during this late contribution reporting period.

Because respondent, by making the \$3,000 contribution, made a contribution totaling \$1,000 or more to a controlled committee during the late contribution reporting period, respondent was required to file a late contribution report in all required filing locations, pursuant to Government Code section 84215, disclosing the late contribution within 24 hours of making the contribution.

Respondent failed to file a late contribution report in all required filing locations, disclosing his \$3,000 late contribution to the Committee to Elect Jeff Hamilton within 24 hours of making the contribution, by on or about February 20, 2002.

23. Respondent testified that he considered the \$3,000 contribution to the Committee to Elect Jeff Hamilton a substantial contribution. He was introduced to Jeff Hamilton by Marc, Peter and Jon Kapetan, local attorney respondent had known since they were children. Respondent made the contribution because he was impressed by Jeff Hamilton's commitment and plans to improve the District Attorney's Office.

Respondent did not expect and would not request any special treatment or consideration from Jeff Hamilton as the result of his contribution.

## COUNT TWO

24. With regard to Count Two, which alleged that in violation of Government Code section 84203 respondent failed to file a late contribution report disclosing his \$6,000 late contribution to the Committee to Elect Marc Kapetan, the parties stipulated that:

On or about February 19, 2002, respondent made a contribution of \$6,000 to the Committee to Elect Marc Kapetan.

The Committee to Elect Marc Kapetan was a committee controlled by Marc Kapetan, a candidate for Fresno County Superior Court Judge in the March 5, 2002, primary election.

The late contribution reporting period for the March 5, 2002, primary election was February 17 through March 4, 2002, and the \$6,000 contribution that respondent made on or about February 19, 2002, to the Committee to Elect Marc Kapetan was made during this late contribution reporting period.

Because respondent, by making the \$6,000 contribution, made a contribution totaling \$1,000 or more to a controlled committee during the late contribution reporting period, respondent was required to file a late contribution report in all required filing locations, pursuant to Government Code section 84215, disclosing the late contribution within 24 hours of making the contribution.

Respondent failed to file a late contribution report in all required filing locations, disclosing his \$6,000 late contribution to the Committee to Elect Marc Kapetan within 24 hours of making the contribution, by on or about February 20, 2002.

25. Respondent testified that he considered the \$6,000 contribution to the Committee to Elect Marc Kapetan a substantial contribution. His respect and affection for Marc, Peter and Jon Kapetan prompted his contributions to their campaigns. Respondent

knew their parents, and that their mother died when the brothers were young. He admired that they worked their way through school and fulfilled their parent's charge of public service.

Respondent did not expect and would not request any special treatment or consideration from Marc Kapetan as the result of his contribution.

### COUNT THREE

26. With regard to Count Three, which alleged that in violation of Government Code section 84203 respondent failed to file a late contribution report disclosing his \$6,000 late contribution to the Committee to Elect Peter Kapetan, the parties stipulated that:

On or about February 19, 2002, respondent made a contribution of \$6,000 to the Committee to Elect Peter Kapetan.

The Committee to Elect Peter Kapetan was a committee controlled by Peter Kapetan, a candidate for Fresno County Superior Court Judge in the March 5, 2002, primary election.

The late contribution reporting period for the March 5, 2002, primary election was February 17 through March 4, 2002, and the \$6,000 contribution that respondent made on or about February 19, 2002, to the Committee to Elect Peter Kapetan was made during this late contribution reporting period.

Because respondent, by making the \$6,000 contribution, made a contribution totaling \$1,000 or more to a controlled committee during the late contribution reporting period, respondent was required to file a late contribution report in all required filing locations, pursuant to Government Code section 84215, disclosing the late contribution within 24 hours of making the contribution.

Respondent failed to file a late contribution report in all required filing locations, disclosing his \$6,000 late contribution to the Committee to Elect Peter Kapetan within 24 hours of making the contribution, by on or about February 20, 2002.

27. Respondent testified that he considered the \$6,000 contribution to the Committee to Elect Peter Kapetan a substantial contribution. As described in Finding 25, above, his contribution was prompted by his respect and affection for Peter Kapetan.

Respondent did not expect and would not request any special treatment or consideration from Peter Kapetan as the result of his contribution.

## **COUNT FOUR**

28. With regard to Count Four, which alleged that in violation of Government Code section 84203 respondent failed to file a late contribution report disclosing his \$6,000 late contribution to the Committee to Elect Jon Kapetan, the parties stipulated that:

On or about February 19, 2002, respondent made a contribution of \$6,000 to the Committee to Elect Jon Kapetan.

The Committee to Elect Jon Kapetan was a committee controlled by Jon Kapetan, a candidate for Fresno County Superior Court Judge in the March 5, 2002, primary election.

The late contribution reporting period for the March 5, 2002, primary election was February 17 through March 4, 2002, and the \$6,000 contribution that respondent made on or about February 19, 2002, to the Committee to Elect Jon Kapetan was made during this late contribution reporting period.

Because respondent, by making the \$6,000 contribution, made a contribution totaling \$1,000 or more to a controlled committee during the late contribution reporting period, respondent was required to file a late contribution report in all required filing locations, pursuant to Government Code section 84215, disclosing the late contribution within 24 hours of making the contribution.

Respondent failed to file a late contribution report in all required filing locations, disclosing his \$6,000 late contribution to the Committee to Elect Jon Kapetan within 24 hours of making the contribution, by on or about February 20, 2002.

29. Respondent testified that he considered the \$6,000 contribution to the Committee to Elect Jon Kapetan a substantial contribution. As described in Finding 25, above, his contribution was prompted by his respect and affection for Jon Kapetan.

Respondent did not expect and would not request any special treatment or consideration from Jon Kapetan as the result of his contribution.

## **COUNT FIVE**

30. With regard to Count Five, which alleged that in violation of Government Code section 84203 respondent failed to file a late contribution report disclosing his \$100,000 late contribution to the Bill Jones for Governor Committee, the parties stipulated that:

On or about February 20, 2002, respondent made a contribution of \$100,000 to the Bill Jones for Governor Committee.



The Bill Jones for Governor Committee was a committee controlled by Bill Jones, a candidate for governor in the March 5, 2002, primary election.

The late contribution reporting period for the March 5, 2002, primary election was February 17 through March 4, 2002, and the \$100,000 contribution that respondent made on or about February 20, 2002, to the Bill Jones for Governor Committee was made during this late contribution reporting period.

Because respondent, by making the \$100,000 contribution, made a contribution totaling \$1,000 or more to a controlled committee during the late contribution reporting period, respondent was required to file a late contribution report in all required filing locations, pursuant to Government Code section 84215, disclosing the late contribution within 24 hours of making the contribution.

Respondent failed to file a late contribution report in all required filing locations, disclosing his \$100,000 late contribution to the Bill Jones for Governor Committee within 24 hours of making the contribution, by on or about February 21, 2002.

31. Respondent testified that he considered the \$100,000 contribution to the Bill Jones for Governor Committee a very large sum. Respondent has known Bill Jones for more than twenty years and considers him a close friend. The contribution was solicited by Bob Jenkins of the Committee, and Bill Jones personally discussed the cost of his statewide campaign with respondent.

Respondent recalled that he “thought long and hard” about the contribution, and specifically made sure the amount was allowed. He knew generally that there are state and federal laws limiting contributions, and those laws are constantly changing. Respondent was assured that the \$100,000 contribution was allowed.

Respondent did not expect and would not request any special treatment or consideration from Bill Jones as the result of his contribution.

## COUNT SIX

32. With regard to Count Six, which alleged that in violation of Government Code section 84605 respondent failed to timely file a semi-annual campaign statement electronically by the January 31, 2003, due date, the parties stipulated that:

On or about February 20, 2002, respondent’s cumulative campaign contributions for calendar year 2002 totaled \$127,000.

Upon making contributions totaling \$50,000 or more in a calendar year, respondent became obligated by Government Code section 84605, subdivision (a), to file all of his required campaign statements online or electronically with the Secretary of State, in addition to filing paper statements as required by Government Code section 84200,

subdivision (b). Respondent timely filed both a paper and electronic version of his first semi-annual campaign statement for the January 1 through June 30, 2002, reporting period on or about July 31, 2002. He also filed both electronic and paper copies of late contribution reports for contributions that he made in the fall of 2002.

On or about January 16, 2003, respondent timely filed his second semi-annual campaign statement for the reporting period July 1 through December 31, 2002, in paper form. The campaign statement disclosed that respondent made \$40,000 in contributions during the semi-annual campaign reporting period July 1 through December 31, 2002.

Because respondent made contributions during the semi-annual campaign reporting period July 1 through December 31, 2002, and the cumulative amount of his contributions during the 2002 calendar year was \$50,000 or more, respondent was also required to file a semi-annual campaign statement online or electronically with the Secretary of State by the January 31, 2003, due date, disclosing the contributions that he made during the semi-annual reporting period.

To date, respondent has failed to file a semi-annual campaign statement online or electronically, for the reporting period July 1 through December 31, 2002, with the Secretary of State by the January 31, 2003, due date.

## LEGAL CONCLUSIONS

1. The purpose of campaign reporting under the Political Reform Act is the full and truthful disclose of receipts and expenditures in election campaigns so that voters may be fully informed and improper practices may be inhibited. Government Code section 81002, subdivision (a). In furtherance of that purpose, candidates and committees have certain reporting obligations under the Act.

"Late contribution reports are an important part of the Act's disclosure system because they advise the public of contributions of \$ 1,000 or more received by candidates or committees during the last two weeks before an election. This is a period of intense campaign activity when large amounts of money change hands. Therefore, the Act requires such transactions to be publicly disclosed to promote a more informed electorate." *In the Matter of Robert "Tim" Leslie, et al.*, FPPC No. 93-250 (1994); *In the Matter of Yes on Measure "A" et al.*, FPPC No. 91-590 (1993); *Lucy Killea, et al.*, FPPC No. 91-203 (1992).

2. Government Code section 83116, subdivision (c), provides that the Commission may levy administrative fines of up to \$5,000 for each violation of the Act. Respondent stipulated to violations of the Act; five of the six violations involved failing to properly report late contributions. The sixth violation involved failing to electronically file a semi-annual major donor campaign statement for the second semi-annual reporting period in 2002.

3. Government Code section 91001, subdivision (c), states: "Whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith shall be considered in applying the remedies and sanction of [the Political Reform Act]."

California Code of Regulations, title 2, section 18361, subdivision (e)(4), "Factors to be Considered by the Commission" states:

In framing a proposed order following a finding of a violation pursuant to Government Code section 83116, the Commission and the administrative law judge shall consider all the surrounding circumstances including but not limited to:

- (A) The seriousness of the violation;
- (B) The presence or absence of any intention to conceal, deceive or mislead;
- (C) Whether the violation was deliberate, negligent or inadvertent;
- (D) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code Section 83114(b);
- (E) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
- (F) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

3. The five instances in which respondent did not file late contribution reports were serious violations. Late contribution reports are the only practical way the press and public can learn of "eleventh hour" campaign contributions, and the failure to file such reports has serious consequences for an informed electorate. Respondent does not deny the significance of the reporting violations to which he stipulated.

No evidence indicated that respondent intended to conceal, deceive or mislead by failing to properly report late contributions and failing to electronically file a semi-annual major donor campaign statement.

No evidence established that respondent's failure to properly report late contributions and electronically file a semi-annual statement was deliberate. The preponderance of evidence established that respondent's failure to properly report late contributions was negligent. The preponderance of evidence established that respondent's failure to electronically file a semi-annual major donor campaign statement, which was timely filed in writing, was inadvertent.

The subject Accusation did not involve the factor of whether the violator demonstrated good faith by consulting the Commission staff or another agency in a manner not constituting a complete defense under Government Code section 83114, subdivision (b).

Respondent has no prior record of violations of the Act or similar laws, and cooperated with the Commission's investigation. The "set" of five essentially concurrent late contribution report violations did not constitute a "pattern" of violations, which implies ongoing practices. The sixth violation, failing to electronically file a campaign statement which was filed in writing, was an isolated mistake.

Filing the five late contribution reports so long after the March 2002 primary would serve no purpose, and was apparently not required by the Commission. As noted above, respondent filed the written semi-annual major donor campaign statement before the January 31, 2003, deadline. He filed the electronic version prior to the hearing.

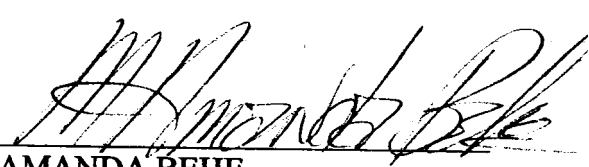
4. In consideration of the Factual Findings and the Legal Conclusions above, the penalty assessed against respondent for each of the five late contribution report violations is \$2,000. The total monetary penalty is \$10,000.

In consideration of the Factual Findings and the Legal Conclusions above, no penalty is assessed against respondent for failing to electronically file a major donor campaign statement for the second semi-annual reporting period in 2002.

#### ORDER

Respondent Harry J. Pappas shall pay \$10,000 to the General Fund of the State.

Dated: November 19, 2004

  
M. AMANDA BEHE  
Administrative Law Judge  
Office of Administrative Hearings